

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 6176 of 2005

Between:

- 1 T. Thimmappa, S/o. Venkatappa,
Yerrampalli Village, H/o. Bodiguttapalle,
V. Kota Mandal, Chittoor District.
- 2 T. Chinna Swamy, S/o. Venkatappa,
Yerrampalli Village, H/o. Bodiguttapalle,
V. Kota Mandal, Chittoor District.
- 3 T. Munaswamy, S/o. Venkatappa,
Yerrampalli Village, H/o. Bodiguttapalle,
V. Kota Mandal, Chittoor District.
- 4 T. Chengamma, W/o. Munivenkatappa,
R/o. Nernipalle Village & Post, V. Kota Mandal, Chittoor District.

..... PETITIONERS

AND

The A.P., Wakf Board, rep. by its Chief Executive Officer,
A.P. Haj House, Haj House Bldgs, Nampally, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ, order or deireciton more particualrly, one in the nature of Writ of Mandamus declaring the action of the respondent in issuing the impugned order under proceedings No.M7/1363/Prot/CTR/2000, dt. 04.02.2005 as illegal, arbitrary and violative of the Articles of the Constitution of India and consequently set aside the proceedings No.M7/1363/Prot/CTR/2000, dt.04.02.2005, passed by the respondent, and to pass such other order or orders.

Counsel for the Petitioners: MR.S.S.BHATT

Counsel for the Respondent: MR.S.M.SUBHANI

(SC FOR AP WAKF BOARD)

The Court at the stage of admission made the following

ORAL ORDER:

Heard the learned counsel for the petitioners as well as the learned standing counsel for A.P. Wakf Board, appearing on behalf of the respondent.

2. The writ petition is filed seeking writ of Mandamus declaring the action of the respondent in issuing the impugned order under proceedings No.M7/1363/Prot/CTR/2000, dated 04-02-2005, as illegal and arbitrary.

3. The main grievance of the petitioners is that the impugned proceedings were issued in violation of the provisions of Section 54 (3) of the Wakf Act, 1995 (for brevity “the Act”) and the petitioners inherited the properties in dispute from their grand father. There are various other particulars, which have been narrated in the writ petition, but none of those are not worth mentioning, since the same are not relevant.

4. Be that as it may, the respondent affixed notices purported to have been issued under F.No.1363/Prot/M6/ CTR/2000, dated 21-12-2000 on the doors of the houses of the petitioners. The said notices were not served in person to any of the petitioners. On the contrary, simply the same were affixed to the doors of the houses of the petitioners.

5. The learned counsel for the petitioners contends that the procedure prescribed under sub-section (3) of Section 54 of the Act is not followed.

6. In this regard, it is relevant to extract the sub-section (3) of Section 54 of the Act, which reads thus:

“(3) If, after considering the objections, received during the period specified in the notice, and

after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.”

7. Further, it is more relevant to extract the sub-section (4) of Section 54 of the Act, which reads thus:

“(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to established that he has right, title or interest in the land, building, space or other property.”

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgage by the mutawalli of the wakf or by any other person authorized by him in this behalf.”

8. From a bare reading of sub-section (4) of Section 54 of the Act, it is abundantly clear that if any person is aggrieved by the order made by the Chief Executive Officer, under sub-section (3) of Section 54 of the Act, he can seek redressal by way of instituting a suit in a Tribunal to establish his right, title or interest in the property in dispute. However, this right is subject to the conditions postulated under the proviso of sub-section (4) of Section 54 of the Act.

9. From the above, it is clear that the petitioners have been disputing the right of the respondent while asserting their right independently. In such an event, if the petitioners have any grievance in that regard with regard to the orders passed by the respondent under sub-Section (3) of Section 54 of the Act, there is a clear statutory and efficacious remedy available to the petitioners as provided under sub-section (4) of Section 54 of the Act.

10. Having regard to the facts and circumstances, this Court, without going into the merits of the case and also without expressing any opinion on merits, is inclined to dismiss the writ petition only on the sole question of its maintainability of this writ petition.

11. Accordingly, the writ petition is dismissed, at the stage of admission. However, the petitioners are at liberty to file a suit before the Tribunal constituted under the Act

and seek their redressal, if they are so advised. No costs.

D.S.R.VARMA, J

23rd March 2005

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ASSISTANT REGISTRAR

To

1. The Chief Executive Officer, The A.P., Wakf Board,
A.P. Haj House, Haj House Bldgs, Nampally, Hyderabad.

2. Two CD copies